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SUPREME COURT, U.S.

No. 06-801

IN THE

Supreme Court of the United States

JOHN E. SHAVERS,

Petitioner,

v.

UNITED STATES FIRE INSURANCE COMPANY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION UNITED STATES FIRE INSURANCE COMPANY

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QUESTIONS PRESENTED

I. Whether the Petitioner has presented a compelling reason to grant the Petition, where the Petitioner has failed to cite to any conflict among the federal courts regarding the issue of whether 11 U.S.C. § 109(g) is applicable to the filing of an involuntary bankruptcy petition.

II. Whether the Petitioner has presented a compelling reason to grant the Petition, where the Petitioner has failed to cite to any conflict among the federal courts regarding the issue of whether a debtor, such as the Petitioner here, should be permitted to file an answer to an involuntary bankruptcy petition after a trial on the merits of his motion to dismiss the involuntary bankruptcy petition.

III. Whether the Petitioner has presented a compelling reason to grant the Petition, where the Petitioner is seeking issuance of a Writ of Certiorari regarding an issue that was not before the Appeals Court from which the Order appealed was issued.

STATEMENT PURSUANT TO RULE 29.6

Respondent, United States Fire Insurance Company, is ultimately wholly owned by Fairfax Financial Holdings Limited, FFHL Group, Ltd., Fairfax, Inc., and Crum & Forster Holding, Inc.

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STATEMENT OF THE CASE

This brief is submitted on behalf of Respondent, United States Fire Insurance Company ("U.S. Fire") in opposition to Petitioner, John E. Shavers' Petition for Writ of Certiorari (the "Petition").

A. Petitioner, John E. Shavers' Prior Voluntary Bankruptcy

On or about January 10, 2003, the Petitioner, John E. Shavers filed a Voluntary Petition for Bankruptcy protection pursuant to Chapter 11 of Title 11, United States Code in the United States Bankruptcy Court for the Eastern District of Louisiana, *In Re Shavers*, No. 03-10225. Thereafter, Mr. Shavers filed a motion to dismiss his bankruptcy petition. On April 22, 2003, the Hon. Jerry A. Brown, U.S.B.J., dismissed with prejudice Shavers' bankruptcy. In his decision, Judge Brown held that "I grant the Motion to Dismiss, but it's a dismissal with prejudice under 109(g), and that means that the Debtor cannot file again for 180 days. It doesn't mean, of course, that [U.S. Fire] can't file an involuntary if [it] choose[s] to do so." Bankr. E.D. La. No. 03-10225, Docket No. 113, p. 12].

B. John Shavers Involuntary Bankruptcy

On or about August 5, 2003, alleged creditors Barbara Ellen Elliott, Mr. Shavers' bookkeeper, Robert Elliott, Ms. Elliott's brother and James Stockstill, Mr. Shavers' long time business partner, filed an involuntary bankruptcy petition against John E. Shavers pursuant to Chapter 11 of the United States Code, in the United States Bankruptcy Court for the

Eastern District of Louisiana, under the caption, *In re John E. Shavers*, petition no. 03-15899 (the "Involuntary Bankruptcy"). As a result of the debt owed by Mr. Shavers pursuant to his contractual indemnity obligations, U.S. Fire filed a motion to join as a petitioning creditor against Mr. Shavers. On September 17, 2003, the Louisiana Bankruptcy Court granted U.S. Fire's motion to join as a petitioning creditor against John Shavers. [Bankr. E.D. La. No. 03-15899, Docket No. 49]. The Louisiana Bankruptcy Court also entered orders permitting Shavers-Whittle Construction, Herbert Stelly and James Koerber to join as petitioning creditors against Mr. Shavers. [Bankr. E.D. La. No. 03-15899, Docket Nos. 55, 81, and 121].

Mr. Shavers filed a motion to dismiss the involuntary bankruptcy petition arguing:

> (1) the court lacks subject matter and in personam jurisdiction because John Shavers is precluded from being a debtor pursuant to 11 U.S.C. § 109(g); and
>
> (2) the court lacks subject matter and in personam jurisdiction because the petitioning creditors do not qualify as creditors pursuant to 11 U.S.C. § 303 (b) and (c).

[Bankr. E.D. La. No. 03-15899, Docket No. 50]. U.S. Fire filed opposition to Mr. Shavers' motion to dismiss the involuntary petition and filed a cross-motion seeking the appointment of a trustee.

On October 10, 2003, Judge Brown presided over a trial in connection with, among other things, (1) Mr. Shavers' motion to dismiss the involuntary petition, and (2) U.S. Fire's motion to appoint a trustee. During the trial, the Court heard testimony from numerous witnesses, including Mr. Shavers himself, and was presented with overwhelming evidence regarding Mr. Shavers' debts and his efforts to hinder, delay and defraud his creditors. Based on the overwhelming testimony and evidence presented during the trial, Judge Brown denied Mr. Shavers' motion to dismiss the involuntary petition. Judge Brown held that 11 U.S.C. § 109(g) did not prohibit the petitioning creditors from filing an involuntary bankruptcy petition against Mr. Shavers. Judge Brown also held that the requirement of 11 U.S.C. § 303 regarding the qualifications of petitioning creditors was satisfied. [Bankr. E.D. La. No. 03-15899, Docket No. 127, p. 69] Judge Brown went on to hold:

> All right, I've considered the evidence that's been elicited here and I find that the Debtor is generally not paying the Debtor's debts as the debts become due and I find that the debts he's not paying are not the subject of a bona fide dispute. They're in the name of judgments and notes and other non-contingent liabilities. There's been no evidence put on to counter the evidence that proves the Debtor is not paying his debts. For those reasons I enter an order of relief in this case that the Chapter 11 is permitted and that it will go forward . . .

[Bankr. E.D. La. No. 03-15899, Docket No. 127, p. 72] Thereafter, Judge Brown entered a written Order for relief under Chapter 11 on October 15, 2003. [Bankr. E.D. La. No. 03-15899, Docket No. 125]

Mr. Shavers filed a motion for reconsideration of the October 15, 2003, Order for Relief under Chapter 11. [Bankr. E.D. La. No. 03-15899, Docket No. 140] The motion for reconsideration was denied by Judge Brown by Order dated November 4, 2003. [Bankr. E.D. La. No. 03-15899, Docket No. 158]

On November 10, 2003, Mr. Shavers filed a Notice of Appeal of the November 4, 2003, Order denying his motion for reconsideration. [Bankr. E.D. La. No. 03-15899, Docket No. 164] On November 10, 2003, Mr. Shavers also filed a "Motion to Stay Pending Appeal and Leave to Appeal Interlocutory Order." [Bankr. E.D. La. No. 03-15899, Docket No. 166] In that motion, Mr. Shavers sought: (1) to stay the transfer of the case to the United States Bankruptcy Court for the Southern District of Mississippi pending his appeal of the Order denying his motion for reconsideration, and (2) leave to appeal the interlocutory order denying his motion for reconsideration. On November 14, 2003, Judge Brown, U.S.B.J., entered an Order denying Mr. Shavers motion to (1) stay pending appeal, and (2) seeking leave to appeal the interlocutory order. [Bankr. E.D. La. No. 03-15899, Docket No. 170]

On November 4, 2003, Judge Brown held a hearing in connection with a motion to transfer the involuntary bankruptcy to the United States Bankruptcy Court for the Southern District of Mississippi. Mr. Shavers' Involuntary Bankruptcy was subsequently transferred to the United States Bankruptcy Court for the Southern District of Mississippi by Order dated November 4, 2003. [Bankr. E.D. La. No. 03-15899, Docket No. 157] The Involuntary Bankruptcy was assigned Docket No. 03-55729.

Mr. Shavers' appeal of Judge Brown's October 16, 2003, order denying Shavers' motion to dismiss was also transferred to the United States District Court for the Southern District of Mississippi. The Record on Appeal in connection with Mr. Shavers' appeal of the November 4, 2003, Order denying his motion for reconsideration was docketed in the United States District Court for the Southern District of Mississippi, docket no. 04-0027, on January 16, 2004. [Dist Ct. S.D. Ms. No. 04-0027, Docket No. 1] On February 1, 2005, the Hon. Louis A. Guirola, Jr., U.S.D.J., entered a Memorandum and Order affirming the October 15, 2003, Order for Relief entered by Judge Brown, U.S.B.J. [Dist. Ct. S.D. Ms. No. 04-0027, Docket No. 32]

Judge Guirola held, among other things:

(1) that Shavers' appeal of the October 15, 2003, Order for Relief was properly transferred by the District Court for the Eastern District of Louisiana to the District Court for the Southern District of Mississippi [Dist. Ct. S.D. Ms. No. 04-0027, Docket No. 32, p. 4];

(2) that Judge Brown, U.S.B.J., properly found that the requirements of 11 U.S.C. § 303(h) were satisfied and, thus, October 15, 2003, Order for Relief was proper [Dist. Ct. S.D. Ms. No. 04-0027, Docket No. 32, p. 4] ; and

(3) that 28 U.S.C. § 109(g) does not apply to the involuntary bankruptcy petition filed against Mr. Shavers. [Dist. Ct. S.D. Ms. No. 04-0027, Docket No. 32, p. 4]

In a January 8, 2004, hearing, the Hon. Edward R. Gaines, U.S.B.J, in granting U.S. Fire's motion to appoint a trustee to administer John Shavers' bankruptcy estate, stated, in pertinent part:

> I have been a bankruptcy judge in this area for, I think 17 years, now . . . This has turned out to be the most difficult of all, because it is overwhelming, frighteningly, abundantly clear to this Court that this debtor, Mr. Shavers, is the most fraudulent, dishonest, conniving, intelligently – I can't even find enough words to tell you how great this man is at obfuscation, deceit, just plain indecent treatment of the bankruptcy system, not to mention what he does to creditors. I have never seen the courts of this country as abused by a person as Mr. Shavers, and anybody who wants to ask me why I think that should just read the plethora of pleadings that have come out of his cornucopia brain.
>
> * * *
>
> I guess it's like trying to put a nail in a shoe of somebody running a race. We've got to somehow – Judge Brown or the people in New York, or me, somebody has got to stop Mr. Shavers.
>
> * * *
>
> [John Shavers has] done everything he can do to circumvent justice. If I had a clue that the United States Attorneys' Office would do anything about it, it would thrill me. If I had a clue that the

> Marshall's Office could do anything about it, I'd be thrilled to death. But, by God, I may be the only person who can do anything about it, and what I do about it might only last 24 hours, but what I am going to do is grant this motion.

[Bankr. S.D. Ms. No. 03-55729, Transcript of Jan. 8, 2004 Hearing, pp. 167-169]

On January 9, 2004, Judge Gaines entered an Order converting the Shavers Bankruptcy to Chapter 7 and appointed a Chapter 7 Trustee. [Bankr. Ct. S.D. MS No. 03-55729, Docket No. 66]

On July 6, 2005, Mr. Shavers' notice of appeal of the October 16, 2003, Order for Relief and the November 4, 2003, Order denying reconsideration, was docketed in the United States District Court for the Eastern District of Louisiana, docket no. 05-2746. [Dist. Ct. E.D. La. No. 05-2746, Docket No. 1] On January 4, 2006, the Hon. Lance Affrick, U.S.D.J., issued an Order dismissing Mr. Shavers' appeal and entered judgment in favor of U.S. Fire. Judge Africk held, in pertinent part:

> Shavers' first appeal of Judge Brown's decision was docketed on November 10, 2003. The appeal went to United States District Judge Ann Vial Lemmon of the Eastern District of Louisiana. Noting that Shavers' bankruptcy case had been transferred to the Southern District of Mississippi, Judge Lemmon similarly transferred the appeal. Shavers' appeal was filed with the Mississippi court on January 16, 2004. On February 1, 2005, Judge Louis Guirola published an eight-page

> opinion that, while fully considering Shavers' arguments, affirmed Judge Brown's order and denied Shavers' appeal. Subsequently, Shavers appealed Judge Guirola's ruling to the United States Court of Appeals for the Fifth Circuit. Shavers' appeal now pending before this court presents an issue already decided by Judge Guirola. His appeal is, therefore, duplicative.

[Dist. Ct. E.D. La. No. 05-2746, Docket No. 3, p. 2]

Mr. Shavers' filed an appeal to the Fifth Circuit Court of Appeals, Civil Appeal No. 05-60143, in connection with Judge Guirola's February 1, 2005, Order affirming the Order for Relief. On May 24, 2006, the Fifth Circuit Court of Appeals entered an Order affirming Judge Guirola's February 1, 2005, Order. [Fifth Circ. Ct. App. No. 05-60143] This is the Order which forms the basis for Mr. Shavers' Petition.

Mr. Shavers also filed an appeal to the Fifth Circuit Court of Appeals, Civil Appeal No. 06-30106, in connection with Judge Affrick's January 4, 2006, Order. That appeal presented the identical issues previously decided by the Fifth Circuit in Civil Appeal No. 05-60143. Contrary to the statement made by the Petitioner in his brief (Pet. Bf. p. 6), the Fifth Circuit had rendered a decision in Civil Appeal No. 06-30106 prior to the filing of the corrected Petition. The Fifth Circuit issued an Order on October 4, 2006, affirming Judge Affrick's January 4, 2006, Order. [Fifth Circ. Ct. App. 06-30106] In that Order, the Court stated,

> We further note that Shavers appealed Judge Guirola's ruling to this court, which affirmed his

> ruling in May 2006. This court has thus already heard and rejected the arguments that Shavers raises in his latest appeal. Shavers' appeal of Judge Affrick's ruling appears to be an attempt to delay legal resolution and frustrate his creditors. We warn Shavers that further frivolous filings will result in sanctions by the Court.

[Fifth Circ. Ct. App. No. 06-30106, Oct. 4, 2006 Order, p. 3]

REASONS FOR DENYING THE PETITION

The decision of the United States Court of Appeals as well as the District Court Decision do not conflict with a decision of this Court or any Court of Appeals nor do they implicate any important federal question that has not been decided by this Court. Accordingly, the Petitioner has not carried its burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10. The arguments asserted by the Petitioner demonstrate that the Petitioner is merely unhappy with the lower Courts' application of the facts and the properly stated rules of law.

I. 11 U.S.C. § 109(g) IS NOT APPLICABLE TO THE FILING OF THE INVOLUNTARY BANKRUPTCY PETITION AGAINST JOHN E. SHAVERS

Petitioner John E. Shavers, *pro se* (the "Petitioner"), has failed to present any compelling reason for its Petition for a Writ of Certiorari to be granted. Specifically, the Petitioner has failed to identify any conflict between the federal courts with respect to the issue of whether 11 U.S. C. § 109(g) is applicable to the filing of an involuntary bankruptcy petition. Indeed, the Petitioner has failed to cite to a single case that even addresses this issue. Rather, the Petitioner cites to a series of sections

from bankruptcy treatises and then makes an incredible leap to suggest that:

> [T]here exists a conflict by and between the Congressional intent of Congress to provide "equality of the law" to all eligible debtors in a national scheme, the various Circuit Courts of Appeal; law review and journal articles; Cowan and Collier's on Bankruptcy treatises, and to deny bankruptcy jurisdiction to ineligible debtors as a matter of law, in a court of improper venue.

(Pet. Bf at p. 9). There is simply no conflict for the Court to decide at this time.

Both the District Court and the Fifth Circuit Court of Appeals properly rejected the Petitioners' argument that this case should be dismissed pursuant to 11 U.S.C. § 109 because he is not an eligible debtor. That Bankruptcy Code section prevents a debtor from re-filing a bankruptcy petition within 180 days following the dismissal of a prior bankruptcy. The Code section does not prevent a non-collusive involuntary petition from being filed within 180 days of the previous dismissal. Other than a blanket statement to Code Section 109(g), as well as citations to sections of various bankruptcy treatises, the Petitioner cites to no authority in support of his argument.

Code section 109(g)(2) provides that,

> [N]o individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding one hundred and eighty days if—
>
> * * *

> (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

The purpose of this Code section is to prevent debtors from using repetitive filings as a method of frustrating creditor's efforts to recover what is owed them. *Matter of Ulmer*, 19 F.3d 234, 235 (5th Cir. 1994); *In re Munkwitz*, 235 B.R. 766, 768 (E.D. Pa. 1999) (citing 2 *Collier on Bankruptcy* § 109.08, 109.48 (15th ed. Revised 1999); *In re Richardson*, 217 B.R. 479, 488 n. 15 (Bankr. M.D. La. 1998); *In re Keul*, 76 B.R. 79, 80-81 (Bankr. E.D. Pa. 1987)). "The section denies a debtor the opportunity to invoke repeatedly the automatic stay of Title 11. Without the section, a debtor could move in and out of bankruptcy, forcing a creditor to pursue time and again the right to collect a debt." *Id.*

"Being a debtor" under the statute means "being allowed to *initiate* a bankruptcy case." *In re Cormier*, 147 B.R. 285, 288 (Bankr. D. Maine 1992). A review of the legislative history of the Code Section 109(g) makes this clear. The pertinent Senate Report states, "The sections as amended will prohibit any party from filing a petition who, within the previous six months, has had a previous petition dismissed upon voluntary motion for dismissal." *Id.*, citing S. Rep. 98-65 at 74 (98th Cong., 1st Sess.) (1983).

Code section 109(g) is limited to repeat filings by a debtor. It does not prevent an involuntary petition from being filed pursuant to section 303 of the Bankruptcy Code. *See In Re Kingston Square Assoc.*, 214 B.R. 713, 725-736 (Bankr. S.D.N.Y. 1997). In fact, on April 16, 2003, during the hearing on Mr. Shavers' motion to voluntarily dismiss his previous

voluntary bankruptcy, the Honorable Jerry A. Brown, United States Bankruptcy Court for the Eastern District of Louisiana, held that "I grant the Motion to Dismiss, but it's a dismissal with prejudice under 109(g), and that means that the Debtor cannot file again for 180 days. It doesn't mean, of course, that [U.S. Fire] can't file an involuntary if [it] choose[s] to do so." [Bankr. E.D. La. No. 03-10225, Docket No. 113, page 12].

In the subsequent Involuntary Bankruptcy, the Petitioner, John Shavers, did not re-file a petition within 180 days. Rather, the Petitioner's accountant/bookkeeper, Barbara Elliot, Ms. Elliot's brother, Harold Elliot, and James Stockstill, the Petitioner's business partner, filed an involuntary petition against Mr. Shavers on August 5, 2003. U.S. Fire, Shavers-Whittle Construction, Inc., Herbert Stelly, and James Koerber joined as petitioning creditors.

In seeking to invoke Code section 109(g), the Petitioner is seeking to abuse the judicial system. Code section 109(g) is designed to protect creditors and prevent debtor abuse. The Petitioner is seeking to use the statute for his own abusive purposes. The Petitioner did not "initiate" the case; an involuntary petition by definition is **not voluntary** and not susceptible to being "initiated" by the debtor. The statute was not intended to apply in this situation.

Whether the involuntary petition was filed in violation of 11 U.S.C. § 109(g) was an issue properly before and decided by the United States Bankruptcy Court for the Eastern District of Louisiana. As noted above, Mr. Shavers filed a motion to dismiss the bankruptcy petition for violation of 11 U.S.C. § 109(g). On October 10, 2003 the Hon. Jerry A. Brown, U.S.B.J., denied Mr. Shavers' motion to dismiss the

involuntary bankruptcy petition, holding, in part, "[t]he purpose of 109(g) is to keep the debtor from manipulating the system by successive filings; it's not to bar legitimate petitioning creditors from filing if they think there's grounds and if they are duly qualified as petitioning creditors." [Bankr. E.D. La. No. 03-15899, Docket No. 127, p. 23].

The October 15, 2003, Order was subsequently affirmed by the Hon. Louis A. Guirola, Jr., United States District Court Judge, Southern District of Mississippi. [Dist. Ct. S.D. Ms. No. 04-0027, Docket No. 32]

On May 24, 2006, the United States Court of Appeals for the Fifth Circuit entered an Order affirming the October 15, 2003, Order. The Fifth Circuit held that, "Shavers' argument that he is not an eligible debtor under 11 U.S.C. § 109 is without merit." [Fifth Circ. Ct. App. No. 05-60143, May 24, 2006 Order]

II. THE ORDER FOR RELIEF WAS PROPERLY AFFIRMED BY THE FIFTH CIRCUIT BECAUSE SHAVERS HAD A FULL OPPORTUNITY TO PRESENT HIS CASE IN THE TRIAL OF HIS MOTION TO DISMISS HIS INVOLUNTARY BANKRUPTCY PETITION

The Petitioner argues that a Writ of Certiorari should be granted because his rights were violated when the Order for Relief was entered before the Petitioner was able to file an answer to the involuntary petition within 10 days after his motion to dismiss was denied by the Court. (Pet. Bf. p. 9) Once again, the Petitioner has not offered any compelling reason why a Writ of Certiorari should be granted in

connection with this issue. Mr. Shavers has failed to cite to a single authority to support his position, much less any evidence of a conflict among the federal courts with respect to this issue. It is clear that Mr. Shavers is merely unhappy with the various lower courts' application of the facts and the well settled law.

Mr. Shaver's argument was properly rejected by both the District Court for the Southern District of Mississippi, Docket No. 04-0027, and the Fifth Circuit Court of Appeals, Civil Appeal No. 04-60483. The Order for Relief was properly affirmed because: (1) Mr. Shavers presented his objections in his motion to dismiss the petition, (2) Mr. Shavers participated in and was represented by counsel during the trial in connection with the contested petition, and (3) the Order for Relief was entered after Judge Brown presided over a trial in which the overwhelming testimony and evidence presented conclusively established that Mr. Shavers was not paying his debts as they became due.

Bankruptcy Code Section 303(h) provides, in relevant part, that in the event that a debtor challenges an involuntary petition,

> . . . after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—
>
> > (1) the debtor is not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute . . .

Relief under Section 303(h) is mandatory where the requirements of the statute are met. *See In re The Ceiling Fan Distributor, Inc.*, 37 B.R. 701, 702 (M.D. La. 1983).

Courts generally apply a totality of circumstances tests when determining whether to enter an Order for Relief. Courts generally focus on the number of unpaid claims, the amount of the claims, the materiality of nonpayment and the overall condition of debtor's financial affairs. *See In re Concrete Pumping Serv.*, 943 F.2d 627 (6th Cir. 1991); *Liberty Tool & Mfg v. Vortex Fishing Sys., Inc.*, 277 F.3d 1057 (9th Cir. 2001); *In re Arriola Energy Corp.*, 74 B.R. 784, 790 (S.D. Texas 1987). Here, all these factors weighed overwhelmingly in favor of entering the Order for Relief in Mr. Shavers' Involuntary Bankruptcy.

Pursuant to Bankruptcy Rule 1013 where an involuntary bankruptcy petition is contested by the debtor, "the court shall determine the issues of [the] contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order." Fed. R. Bankr. P. 1013; *See Wynn v. Eriksson*, 889 F.2d 644, n.1 (5th Cir, 1989). Rule 1013(a) "is designed to allow creditors to force bankruptcy courts to grant relief expeditiously and before the debtors remaining assets are squandered." *Wynn*, 889 F.2d at 646. Here, Judge Brown complied with the requirement of Rule 1013 by presiding over a trial in connection with the contested involuntary petition on October 10, 2003.

As set forth above, during the October 10, 2003 trial, the Petitioner was present during that trial and was represented by counsel during the trial. [Resp. App. Exh. E, p. 2, 8; Bankr. E.D. La. No. 03-15899, Docket No. 127, pages 2 and 8]. Indeed, the Petitioner testified during that trial. [Bankr. E.D. La. No. 03-15899, Docket No. 127, p. 97]. The overwhelming evidence presented during the trial conclusively established that Mr. Shavers was not paying his

debts when they became due and in fact had engaged in an extensive pattern of attempting to hinder, delay and defraud his creditors. Based on the overwhelming testimony and evidence presented during the trial, Judge Brown held that the requirements of 11 U.S.C. § 303 had been met and that Mr. Shavers was not paying his debts as they became due. [Bankr. E.D. La. No. 03-15899, Docket No. 127, p. 69, 72]. As a result, Judge Brown entered an Order for Relief. [Bankr. E.D. La. No. 03-15899, Docket No. 125].

Whether or not Mr. Shavers was permitted to file an answer to the involuntary petition prior to the Order for Relief is moot. The only effect of the filing of an answer is that the Order for Relief under 11 U.S.C. § 303 is not automatic, but rather the Court must conduct a trial to determine if the debtor is paying his debts as they become due. *See In re Ceiling Fan*, 37 B.R. at 702; 11 U.S.C. § 303(h); Fed. R. Bankr. P. 1013. Here, the Petitioner contested the involuntary petition by filing a motion to dismiss. Judge Brown, in compliance with the statutory mandate of 11 U.S.C. § 303 presided over a trial regarding the contested petition. Based on the overwhelming evidence presented during that trial, Judge Brown held that Mr. Shavers was not in fact "paying his debts as they became due," and accordingly entered an Order for relief. [Bankr. E.D. La. No. 03-15899, Docket No. 127, p. 72] Mr. Shavers had an opportunity to present evidence during the trial to contest the allegation that he was not paying his debts as they became due, however, Mr. Shavers was utterly unable to present any such evidence to refute the allegation.

The Fifth Circuit in its May 26, 2006, Order properly affirmed the District Court's holding that the requirements of 11 U.S.C. § 303(h) were satisfied.

III. THE QUESTION OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA'S JURISDICTION TO ENTER AN ORDER FOR RELIEF WAS NOT BEFORE THE FIFTH CIRCUIT COURT OF APPEALS AND THUS IS NOT THE PROPER SUBJECT OF THE CURRENT PETITION

The Petitioner also seeks the issuance of a Writ of Certiorari in connection with the issue of whether the United States Bankruptcy Court for the Eastern District of Louisiana has jurisdiction to enter the Order for Relief in the Petitioner's Involuntary Bankruptcy. That issue, however, was not before the Fifth Circuit Court of Appeals and thus was not the subject of the Order forming the basis of the Petitioner's Petition. Pursuant to Supreme Court Rule 10, this issue is therefore, not the proper subject of a Petition for Writ of Certiorari. *See* Sup. Ct. R. 10.

CONCLUSION

The Petitioner has not established any compelling reasons for the Court to grant the Petition. Therefore, the Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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